

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR 1999-003536

06/27/2016

HONORABLE MICHAEL W. KEMP

CLERK OF THE COURT
A. Moore
Deputy

STATE OF ARIZONA

KRISTINA REEVES

v.

BRIAN JEFFREY DANN (A)

MATTHEW NEWMAN

CAPITAL CASE MANAGER
VICTIM WITNESS DIV-AG-CCC

MINUTE ENTRY

The Court has reviewed and considered the Defendant's Motion for Rehearing filed June 3, 2016 and addressed to this Court (Hon. Michael Kemp). The Court finds that no response from the State is necessary.

Rule 32.9(a) requires that a motion for rehearing be filed within fifteen days after the ruling of the court. The Court issued its ruling dismissing the Defendant's post-conviction petition on May 19, 2016. The rehearing motion was filed on the fifteenth day. The Court finds the motion for rehearing to be timely.

The Defendant requests (1) that the summary denial issued by Judge Johnson be reversed, (2) that he be allowed to file his discovery motions, citing *Canion v. Cole*, and (3) that the court schedule a Rule 32.7 informal conference so that the parties can discuss the issues before any summary ruling is issued.

In dismissing the Petition for Post-Conviction Relief, the Court (Hon. Boyd T. Johnson) wrote:

The Court, pursuant to Rule 32.6(c), Arizona Rules of Criminal Procedure, having reviewed the Petition for Post-conviction Relief and Exhibits, including the sealed

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exhibits; the Response and exhibits filed by the State; the Reply with exhibits; having considered the applicable legal authorities; giving due regard to the interests of justice; The Court hereby FINDS and ORDERS, as follows: no colorable claim to relief has been raised in these post-conviction proceedings as to those issues raised by the Defendant which are not otherwise precluded from being raised herein, as set forth below; relief is hereby denied in these proceedings and the Petition for Post-Conviction Relief is dismissed.

During the course of its eight-page ruling, the Court set forth its findings as to each of the issues raised by the Defendant.

The Court has reviewed the instant motion and Judge Johnson's ruling dated 5/25/2016, has reviewed the grounds wherein the Defendant believes the Court erred, and finds that the claims made in the rehearing motion lack merit. The Court declines to grant the motion for rehearing.

The Court has reviewed *Canion v. Cole*, 210 Ariz. 598, 115 P.3d 1261 (2005). In *Canion*, the Supreme Court held that a trial judge could grant discovery requests in PCR proceedings upon a showing of good cause. The "good cause" could only be shown in the context of the claims made in a Rule 32 petition. To be entitled to post-conviction discovery, a defendant must raise an "allegation that would state a colorable claim - that is, one that would entitle Canion to relief under Rule 32." *Id.* at ¶12.

By dismissing the post-conviction petition by Ruling dated May 25, 2016, the Court found, however, that the Defendant raised no colorable claims. Thus, it is clear from the Supreme Court's opinion that the Defendant cannot establish "good cause" sufficient to afford him post-conviction discovery.

The Court declines to order post-conviction discovery.

Because the post-conviction proceedings have been dismissed, there are no further proceedings to "expedite" by holding an informal conference in accordance with Rule 32.7.

The Court declines to order an informal conference under Rule 32.7.

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For the reasons stated above,

IT IS THEREFORE ORDERED denying the Defendant's Motion for Rehearing.